

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	4:05CR3060-1
)	
Plaintiff,)	MEMORANDUM
v.)	AND ORDER
)	
OCTAVIO DELVILLAR,)	
)	
Defendant.)	

This matter is before the court on the defendant's notice of appeal ([filing 180](#))¹ and on the recent memo from the clerk's office inquiring whether the defendant may proceed in forma pauperis on appeal ([filing 182](#)). In response to the clerk's inquiry, the court finds that the appeal is not taken in good faith because it is both repetitive and untimely. Thus, the defendant may not proceed in forma pauperis on appeal. *See Fed.R.App.P. 24(a)(3).*

The defendant was convicted of one count of possession with intent to distribute a controlled substance and was sentenced on February 20, 2007, to a term of 151 months' imprisonment. *See filing 126.* His conviction was affirmed on appeal on November 26, 2007. *See filing 166.* The defendant cannot file successive appeals from his conviction. Also, the time for filing an appeal has long since passed. While the defendant may be entitled to file a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255, that issue is not presently before the court.

¹ Filing 180 is entitled "Affidavit of Memorandum of Law Plaintiff's Writ of Habeas Corpus Pursuant to 28 U.S.C. 2241(c)(3)". The document was forwarded to this court by the Clerk of the United States Court of Appeals for the Eighth Circuit with directions that it be docketed as a notice of appeal, filed as of August 22, 2008. (*See filing 179.*)

IT IS ORDERED that:

1. Pursuant to Fed. R. App. P. 24(a)(3)(A), the court certifies that the defendant's appeal ([filing 180](#)) is not taken in good faith because it is repetitive and untimely.
2. Pursuant to Fed. R. App. P. 24(a)(4)(B), the clerk of the court shall send a copy of this memorandum and order to the defendant, personally, and to the Clerk of the United States Court of Appeals for the Eighth Circuit.

September 3, 2008.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge